

**REMARKS**

Upon entry of the present Amendment the claims under consideration remain 1-22. No Claims have been removed from consideration hereby. Applicants have hereby amended independent Claims 1 and 15 to more particularly point out that the present invention is drawn to a web of fluid distribution and retention suitable for use in personal care products. Claims 8-14 have been amended to expedite prosecution by obviating the outstanding § 112 rejections rather than arguing the validity of those rejections. The Detailed Action of 13 August 2003 will now be addressed with reference to the headings and any paragraph numbers therein.

**Claim Rejections -35 USC § 112**

Per paragraph 1 of the Detailed Action, Claims 8-14 stand rejected as being indefinite. With respect to Claims 8-10, the Detailed Action asserts that use of the phrase “the distribution” lacks antecedent basis. Claims 8-10 have hereby been amended to obviate the present rejection in order to expedite prosecution. It is noted that the original Claim referred to “distributed” basis weight areas. With respect to Claims 11-14, the Detailed Action asserts that use of the phrase “lower areas of the web” is unclear. Claims 11-14 have hereby been amended to obviate the present rejection in order to expedite prosecution. It is noted that the Applicants have used the

terms “upper” and “lower” in the specification consistently to refer to a Z-direction orientation.

**Claim Rejections -35 USC § 102**

Per paragraph 3 of the Detailed Action, Claims 1-2, 4, 15, and 17-20 stand as anticipated by Tomita *et al.* (U.S. 5,618,610; hereinafter Tomita). Applicants respectfully note that Tomita is drawn to a laminated web for use as a wiper with the desired structure and functionality of “relatively noticeable undulations on the surfaces which well contribute to scrape stains off from an object to be cleaned.” (col. 5, line 40) so as to be suitable for use as a cleaning cloth for “objects” and not human subjects.

Specifically, in present Claims 1 and 15, the present invention is drawn to:

“An in-line formed, non-laminated web, the web having major surfaces in the X-Y plane and a depth in the Z direction, the web suitable for use as a composite fluid distribution and fluid retention layer in a disposable personal care product, comprising: ...” [underlining added for emphasis]

Applicants have further amended Claims 1 and 15 to make clear that the absorbent function is aided by superabsorbent materials.

Thus, there are naturally significant differences in the structural and functional considerations between Tomita and the liquid distribution and retention web of the present invention. It is noted that Tomita does not discuss the use of its low basis weight areas as necessary for liquid distribution. Nor does Tomita discuss the use of its high basis weight areas as necessary for liquid retention. Nor, (as the Detailed Action admits at paragraph 5 concerning the sec. 103 rejections) does Tomita discuss the use of superabsorbents within its web. This would lead the person having ordinary skill in the art to consider Tomita as non-analogous art.

Applicants respectfully disagree with the assertion of the Detailed Action (at paragraph 3, line 6) that, in Tomita, “whole fibers exists [sic] between the portions.” It is considered more likely that the high pressure water application over a supporting roll 69 (col. 4, line 11+) of Tomita would result in the breaking (disturbing) of fibers. Thus, the high pressure water application of Tomita would not obtain undisturbed whole fibers at the material boundaries as required by limitation c) of both Claims 1 and 15.

Applicants further note that the present invention teaches (as noted in the Abstract of the specification): “Further the necessity of later processing on the web to achieve a ridged structure is removed and the fibers will remain whole and

undisturbed.” As noted above, Tomita obtains its formed web with the later processing step of water pressure application on a forming drum.

Even though it can be seen from the foregoing that Tomita is non-analogous art, nevertheless, in order to further clarify the invention for those of skill in the art, Applicants have amended independent Claims 1 and 15 in order to specifically state that the present invention is drawn to personal care products fit for human use and made clear within the body of the claims that the web of the present invention contains superabsorbent. It will be noted that the hydroentangling process of Tomita is not well suited for making of superabsorbent-containing articles, which if wetted would require expensive drying steps to dehydrate the superabsorbents. Therefore, it is respectfully submitted that the present sec. 102 rejections have been overcome and that all claims under consideration have been placed in condition for allowance.

### **Claim Rejections -35 USC § 103**

Per paragraph 5 of the Detailed Action, Claims 1-22 stand as obvious over Tomita in view of Abuto (WO 00/47153; hereinafter Abuto).

Applicants reiterate the above discussion concerning the inapplicability of Tomita to the subject matter, structure, and function of the presently claimed invention. Applicants respectfully traverse that the Tomita and Abuto references are

properly combinable, noting that Abuto teaches only “airlaying” or “coform” processes, in contrast to the hydroentangling process of Tomita. Because the references are so disparate at the core of their teachings, there can be no suggestion of combinability between the cited references. Therefore, a *prima facie* case of obviousness has not been made by the Detailed Action.

The Detailed Action further notes that Tomita “does not disclose the particularly claimed patterns.” However, it is the (unsupported) assertion of the Detailed Action that: “it would have been obvious to have selected appropriate patterns for the hydroentangling based upon aesthetic considerations, etc., since it is known to hydroentangle fabrics so that patterns are formed.” No reasoned basis is given for this determination of “obviousness.” Applicants, as persons of skill in the art, are unfamiliar with any “aesthetic considerations” which would lead a person having ordinary skill in the art to the claimed patterns. The claimed patterns are congruent with the necessity of imparting the desired functionalities of liquid distribution and retention to the web of the present invention.

Nor is it clear to Applicants where it is “known to hydroentangle fabrics so that patterns are formed.” Tomita appears to only desire an unevenly raised surface as a scrubbing surface. Thus, no special channelization pattern is needed for fluid distribution as would be the case in a personal care article (e.g., the specifically

claimed stripes of present Claim 15). Tomita appears only to teach that its undulations are formed over the summits of “semispheric projections” (see Tomita col. 4, line 27). No patterning is taught. Thus Applicants must further respectfully traverse that a *prima facie* case of obviousness has been put forth by the Detailed Action with respect to the specifically claimed patterns (in conjunction with the limitations of each base claim). Rather, it appears that the present rejections are based on an impermissible “obvious to try” standard constructed from hindsight with the present invention firmly in mind.

The Detailed Action notes that Tomita “does not disclose employing superabsorbents within the high basis weight zones.” but that Abuto teaches absorbent material (including superabsorbents) in rows, and therefore it would have been obvious to “have incorporated a variety of additional components such as superabsorbents, ... into the zones of Tomita...” Applicants respectfully disagree, noting that the use of superabsorbents with a high pressure hydroentangling process as taught by Tomita would be an untenable manufacturing process resulting in the necessity and expense of drying out superabsorbents within the web after the web has been formed.

Applicants further respectfully traverse that the teaching of Abuto at page 11, used by the Detailed Action as motivation to suggest the addition of

superabsorbents to the wiper of Tomita, reveals that “various components may be selected through the process of routine experimentation.” (see Detailed Action, page 4, lines 1-2). Rather, it is believed that the cited passage of Abuto teaches that one must have the functionality and structural considerations of a nonwoven layer firmly in mind and select all material properties with great care. No mention is seen of “routine experimentation.” Tomita, unlike the present invention, is not concerned with liquid retention, noting at col. 3, line 37, that its wiper is “advantageous in that exudation of water or chemical fluid from the top and bottom surfaces 2, 3 is promoted...” Therefore, again, the Detailed Action has failed to make a *prima facie* case of obviousness.

It is noted that the particularly claimed constructions of at least Claims 7, 13, 14, 20 and 21 are rejected and yet the basis of such rejections has not been specifically addressed in the Detailed Action. Applicant therefore requests that the specific reasoning behind such rejections be provided and further reserves the right to specifically respond if such rejections are maintained.

For all the foregoing reasons, the Claims as presently amended are believed to be allowable over the art of record. A notice to that effect is earnestly solicited.

Serial No.: 10/037,451

Docket No.: KCC-15,872

The Examiner is invited to call Applicant's undersigned attorney should the Examiner feel that any issues remain after entry of the present amendment.

Favorable consideration is requested.

Respectfully submitted,

A handwritten signature in cursive script that reads "Roland W. Norris".

Roland W. Norris  
Registration No. 32,799

Pauley Petersen & Erickson  
2800 West Higgins Road; Suite 365  
Hoffman Estates, Illinois 60195  
TEL (847) 490-1400  
FAX (847) 490-1403